



Homeland Security

July 3, 2019

SENT VIA ELECTRONIC MAIL TO: foia@americanoversight.org

Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW Suite B255
Washington, DC 20005

Re: **2019-HQFO-00408**

Dear Mr. Evers:

This is the electronic response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated February 08, 2019 and received by this office on February 11, 2019. You are seeking the following:

- 1- All final talking points prepared for, or used by, DHS Secretary Kirstjen Nielsen for her December 20, 2018 testimony before the U.S. House of Representatives Judiciary Committee; and,
- 2- All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms, telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of current Secretary Nielsen (formerly chief of staff) regarding any and all deaths of individuals while held in DHS custody (including in the custody of ICE or CBP) or following detention in DHS custody, including, but not limited to, records related to the deaths of Jakelin Caal Maquin and Felipe Gomez Alonzo from January 20, 2017 to February 11, 2019.

A search of DHS's Office of Executive Secretariat (ESEC) for documents responsive to your request produced a total of 30 pages. We are granting your request under FOIA, 5 U.S.C. § 552, and DHS FOIA regulations at 6 C.F.R. Part 5. After carefully reviewing the responsive documents, I determined that 12 pages are appropriate for public release. The documents are enclosed in their entirety; DHS has claimed no deletions or exemptions.

In addition, during our search for responsive records, we located records that originated within the U.S. Customs and Border Protection (CBP). Therefore, we are transferring the responsive

documents, totaling 18 pages, to you for your review and direct response. You may contact CBP at:

U. S. Customs & Border Protection (CBP)
FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229
Phone: 202-325-0150

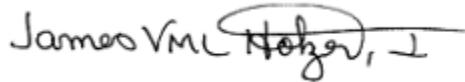
You have the right to appeal if you disagree with DHS's response. You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you need any further assistance or would like to discuss any aspect of your request, please contact the analyst below who processed your request and refer to 2019-HQFO-00408. You may send an e-mail to foia@hq.dhs.gov, call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner.

Sincerely,



James Holzer
Deputy Chief FOIA Officer

Enclosure(s): Responsive Documents, (12 pages)

Written Testimony for House Judiciary Committee Hearing

The Honorable Kirstjen Nielsen
Secretary of Homeland Security

Chairman Goodlatte, Ranking Member Nadler, and distinguished Members of the Committee:

It is a privilege to appear before you today to discuss the Department of Homeland Security's (DHS) critical missions. Before I proceed, let me first extend my gratitude to you, Mr. Chairman, on behalf of a grateful nation for your service to this Committee and to the country. I wish you well in your retirement from Congress.

The men and women of DHS are exceptional and dedicated professionals who are on watch 24 hours a day, 365 days a year. Their mission is to protect Americans from threats by land, sea, air, and in cyberspace, while also promoting our nation's economic prosperity. They work tirelessly to strengthen the safety and security of our nation from persistent and emerging dangers, including terrorists, transnational criminal organizations, rogue nation-states, and natural disasters.

On October 10, I testified before the Senate Committee on Homeland Security and Governmental Affairs regarding threats to our country and our work to thwart them. I encourage you to review that testimony, and I look forward to taking questions on how we are addressing the full spectrum of dangers to the homeland. Today, I want to focus in particular on the crisis at our borders and how DHS is responding to it.

The President has made it one of his highest priorities to secure our nation's borders and enforce our immigration laws, and as Secretary, I have worked hard to execute those missions. These are among the most fundamental responsibilities of a sovereign nation, and they are part of the solemn duty of my Department. I am proud to say that the men and women of DHS have made extraordinary progress to uphold those obligations and provide the safety and security the American people rightfully expect.

Let me begin by briefly outlining a few of the successes achieved by the DHS team to advance the President's homeland security agenda at our borders and on the issue of immigration. I will also elaborate on the current crisis at our southern border and the challenges we face in the realm of enforcing our immigration laws and delivering immigration benefits.

Successes

Despite the many challenges we currently confront at our southern border, the men and women of our Department have remained steadfast in our nation's struggle to secure our borders, and have made historic strides in holding illegal aliens accountable for violating our nation's laws. Our successes so far include, but are not limited to, the following:

- **The Border Wall:** We have championed a "border wall system," to include border barriers, infrastructure, and technology. We are building the first new border wall to go up in a decade. We are also actively replacing old, ineffective barriers. Recent events demonstrate

how important these replacements are to U.S. border security, especially when illegal aliens have circumvented older barriers. While we are building new wall, we still urgently need Congress to provide the necessary resources to construct more where needed to protect our borders.

- **Increased Border Enforcement:** We have witnessed a dramatic uptick in total apprehensions at the southern border, with apprehensions increasing by 25 percent from FY17 to FY18. Our frontline defenders are getting both more efficient and effective and we have similarly increased removals by over 10 percent.
- **Actions to End “Catch and Release”:** We have implemented virtually every measure within our authority and existing budget resources to ensure individuals apprehended at our border are detained until ordered removed by an immigration judge. We are eager to work with Congress to close remaining loopholes that prevent us from fully ending the senseless practice of releasing illegal aliens who often disappear into our country. Allowing legal loopholes to exist will only encourage future illegal migration to flow into our country.
- **Expanding the Workforce:** While we continue to request and champion expansion of the U.S. Border Patrol (USBP) and Immigration and Customs Enforcement (ICE) workforces, our requests for additional staffing have not come to fruition. Nonetheless, we continue to make hiring gains using existing resources – as is the case with CBP – where, in FY2018, we increased Border Patrol hiring by 95 percent, and Office of Field Operations workforce by 35 percent. Increases to CBP staffing directly affect the Department’s ability to stem the illegal entry of goods and people.
- **Deployment of the U.S. Military:** The Department of Defense supports the DHS mission by deploying troops to the southern border to assist and protect the brave men and women of CBP. This collaboration has resulted in the increased prevention of illegal entry, tens of thousands of apprehensions and “turnbacks” – aliens who attempt to illegally enter our country but decide to turn back due to the presence of our agents at the border.
- **Higher Prosecutions:** We dramatically increased referral for prosecution of single adults illegally crossing the border, from 12 percent at the start of the Administration to nearly 50 percent today.
- **Removing Immigration Violators and Criminal Aliens:** We launched a concerted effort to arrest criminal aliens, with a focus on targeting violent gang members, resulting in a more than 10 percent increase in ICE arrests and removals over the past year. ICE continues to prioritize limited resources on public safety threats and immigration violators, as reflected by the fact that 9 in 10 aliens arrested are either convicted criminals, have pending charges, are illegal reentrants, or are ICE fugitives.
- **Decisive Regional Action:** We have developed, with the Department of State, a comprehensive regional approach to combat illegal migration and security challenges, emphasizing partnerships in Mexico and the Northern Triangle countries designed to counter migrant smuggling, human trafficking, transnational criminal organizations, and the drug

trade. For instance, the U.S.-Mexico Transnational Criminal Organization Dialogue focused U.S. and Mexican law enforcement on attacking the business model of the cartels. In addition, at the second Conference for Prosperity and Security in Central America that we recently hosted in Washington, D.C., we highlighted a number of areas where we could coordinate to address shared regional challenges.

- **Fighting Back Against Transnational Criminals:** We have intensified DHS actions to counter transnational organized crime, including a coordinated interagency effort to identify, arrest, and prosecute human, drug, and weapons traffickers, migrant smugglers, and to mitigate the importation of dangerous drugs such as heroin and synthetic opioids into the United States. Additionally, we continue to collaborate with our foreign partners to disrupt and dismantle human trafficking and migrant smuggling networks and to support a coordinated effort to address the broad range of crimes perpetrated by transnational criminal organizations.
- **Protecting Vulnerable Populations:** We are in the process of exploring new counter-measures to mitigate online child sexual exploitation and other crimes against vulnerable populations perpetrated by transnational criminals, including the cases where criminals direct child sexual exploitation in real-time via live-streaming platforms.
- **Asylum Overhaul:** We, along with the Department of Justice (DOJ), published an interim final rule cracking down on illegal entry by barring aliens from seeking asylum who enter the U.S. along the southern border in violation of a presidential proclamation. While this rule has been enjoined, once implemented, it will have a tremendous effect.
- **Confronting Asylum Fraud:** We have also taken action to reduce asylum fraud. For example, this year we returned to an approach of processing affirmative asylum claims used successfully from 1995 through 2014. Known as “Last In, First Out,” it means we prioritize the most recently filed applications when scheduling affirmative asylum interviews. The aim is to deter individuals from using the asylum backlog solely to obtain employment authorization – for example, someone who has been here for years looking for employment and is only now claiming asylum. Giving priority to recent filings allows us to place promptly such individuals into removal proceedings if we determine they filed a frivolous, fraudulent or otherwise non-meritorious asylum application. This approach also allows U.S. Citizenship and Immigration Services (USCIS) to decide qualified applications in a more efficient manner.
- **Deeper Frontline, Local Cooperation:** We have doubled the number of agreements with local law enforcement regarding cooperation on immigration enforcement, and increased available funds for southwest border localities to provide assistance on border protection through available grant programs.
- **Combating the Opioid Epidemic:** We have seized thousands of pounds of opioids, including fentanyl, and increased law enforcement resources dedicated to combating the opioid threat.

- **Holding Countries Accountable:** Under this Administration, we have held countries accountable in cases where they have failed to take back their nationals when they are expelled, removed, or deported. We believe this is an international obligation of every country. In cases of non-compliance—when foreign governments refuse to accept the return of individuals who have been ordered removed from the United States—DHS and the State Department have worked successfully together to make sure countries change their approach and comply with their international legal obligations.
- **Addressing Student Visa Overstays:** We have prioritized efforts to identify and locate student visa overstays and send leads that are more actionable to the field offices throughout the country. As a result, ICE HSI sent 3,918 leads on student visa and exchange visitors to the field in FY 2017, an increase of approximately 65 percent from FY 2016.
- **Expanded Worksite Enforcement:** We have increased criminal prosecutions of employers who knowingly hire unauthorized workers. This year to date, we have opened approximately 6,860 worksite investigations, which is an increase of approximately 400 percent from FY 2017, and initiated approximately 5,950 I-9 audits, an increase of approximately 430 percent from FY 2017.

These successes and many more, are a testament to our devoted workforce and their unbending commitment to the rule of law.

Decisively Confronting the Border and Immigration Crisis

Despite all of the aforementioned successes and the tireless work of our frontline defenders, we face a mounting crisis at our southern border, and again I ask Congress to help us confront it once and for all. Illegal crossings at the southern border are increasing at an alarming rate. The number of overall arrests and inadmissible aliens encountered increased by 62 percent from September 2017 to September 2018. Simultaneously, apprehensions of families increased by 210 percent, and the number of encountered unaccompanied alien children increased by 36 percent.

The illegal alien caravans arriving at our southern border demonstrate the challenge we face. Migrants are being organized and supported to come to our border, deliberately flouting the rule of law and disregarding the legal immigration process. In doing so, they put their own lives in danger and help line the pockets of dangerous transnational criminals. This must end.

This crisis is the direct result of loopholes created by federal law and adverse federal court rulings that prevent the detention and repatriation of illegal unaccompanied alien children and family units. For instance, aliens know that if they arrive with children, they will most likely be released as we are limited in our ability to detain them until removal. Over the last two years, we have seen a 110 percent increase in male adults showing up at the border with minors.

Many illegal aliens have treated this as a “get out of jail free” card, which has resulted in a surge in aliens falsely claiming to be part of a family unit and the abuse of children who are used as pawns to gain entry into America. The results are stunning. For instance, in the past five years,

we have seen a 620 percent increase in families apprehended at the border, and last fiscal year was the highest year on record. Further, from April 19, 2018 to September 30, 2018, 507 aliens came as a family unit and then separated, as they were not a legitimate family unit. We face similar challenges with many illegal aliens falsely claiming to be under the age of 18, which they know will prevent their timely removal. And we have seen surges in the number of aliens claiming fear of return to their home countries or seeking asylum for illegitimate purposes that do not qualify under U.S. law, as evidenced by the low approval rates in immigration courts.

That is why I respectfully request, and will continue to ask, that Congress pass legislation to address key loopholes in existing immigration laws and gaps in our enforcement authorities. These gaps hamper enforcement of the law, weaken border security, and endanger both the American public and the illegal aliens making the dangerous journey to the southern border. These “pull” factors drive illegal migration and undermine the territorial integrity of the United States. The enormity of the lawlessness that the longstanding illegal immigration crisis represents challenges the public’s faith in the rule of law. Congress has the power to close the statutory loopholes that impede our ability to enforce the law and keep America safe.

With that in mind, I want to thank you, Chairman Goodlatte and your Committee Members and staff, for working diligently with us to address legislation that closes loopholes that exacerbate immigration enforcement challenges faced by DHS. This Committee has often been at the forefront of offering reasonable and necessary solutions.

Tougher Border Infrastructure

Let me talk about our immediate activities at the border itself. To secure the homeland from illegal immigration, illegal trafficking of humans and drugs, violence, and other threats associated with unsecure borders, President Trump and I have prioritized construction of a border wall. With the funding Congress has provided for the construction of a border wall system, we have completed approximately 30 miles and new panels are going into the ground every day. This, however, barely scratches the surface of what is needed. As we have recently witnessed at our southern border, old and outdated fencing does almost nothing to prevent illegal entry. I implore Congress to continue this momentum by appropriating all funds requested by the President to complete the wall and provide greater security to our nation.

The vastness and diverse topography of our borders also demands more Border Patrol agents, surveillance technology, and air support. Only a comprehensive approach to border security will keep the United States safe. We will continue to work with this Committee and others to make sure we have the right people, in the right places, at the right time to protect our country. We also need a whole-of-government response, which is why I have asked for and received the support of Department of Defense personnel, the National Guard, and law enforcement agencies at the federal, state, and local level. Their assistance is yielding real results.

Pushing Border Security Outward

Our efforts do not begin at the border. Indeed, we are doing a great deal to push our border security “outward” through international partnerships. It is imperative that we address the

“push” factors that drive people to make the dangerous journey to the United States and attempt to enter our country illegally. To that end, Secretary Pompeo and I have been working tirelessly with our counterparts in the Northern Triangle, Mexico, and beyond, to develop a comprehensive regional approach to deal with the flow of illegal migration. This includes intensive security cooperation, information sharing, economic incentives to develop greater prosperity in the region, and groundbreaking efforts to ensure migrants receive humanitarian protection earlier in the process and closer to home, rather than traveling to the United States. These efforts are paying dividends, and we are hard at work to stem the flow of immigrants.

We are also developing stronger law enforcement partnerships throughout Latin America to detect and disrupt the movement of nefarious actors. Whether it is drug smugglers, human traffickers, terrorists, or other criminals, we are launching new initiatives to find these dangerous individuals before they can get into the United States. Such efforts have allowed us to catch wanted criminals and dangerous threat actors. As long as I am Secretary, we will prioritize these bold actions to make sure that our layered approach to security begins well before an individual even gets close to our country.

Flores Settlement Agreement (FSA)

Once again, the loopholes are among our biggest impediments to achieving lasting border security. One challenge that President Trump and DHS raised in the immigration debate earlier this year concerns the *Flores Settlement Agreement* (FSA). In 1996, the former Immigration and Naturalization Service entered into this agreement following a Supreme Court decision relating to detention of minors and their release. Since that time, litigation on this agreement has continued, and multiple court decisions have further handicapped DHS’s ability to detain minors. Ultimately, the restrictions imposed by this settlement almost always leads to the ‘catch and release’ of family units – and unfortunately, smugglers know of this loophole all too well. From FY 2013 to FY 2018, we have seen an unprecedented 621 percent increase of family units attempting to enter the U.S. FY18 was, in fact, a record-setting year for number of family unit apprehensions, with 107, 212 family units apprehended between ports of entry and 53, 901 family units deemed inadmissible at ports of entry. To stem the tide of migrants using minors as a way into the U.S., I issued a notice of proposed rulemaking to define clear rules on how to humanely deal with this serious challenge.

Unaccompanied Alien Children (UACs)

This Committee is well acquainted with the existing loopholes with regard to UACs. Those loopholes stem from the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA) and burdensome court opinions that have undermined enforcement efforts for years. Certain immigration provisions included in the TVPRA that deal with UACs have created a magnet for minors to enter the United States illegally. Although the law intended to protect trafficking victims, transnational criminal organizations and human traffickers are using the loopholes to entice children to our border, exploiting them for their own gain, and placing the children in danger. Congress must stop this exploitation.

On this issue, the House Judiciary Committee has demonstrated real leadership. The *Securing America's Future Act of 2018* (SAF) and other legislation introduced by the Committee provides the much-needed reforms to remedy the moral hazard created by the criminal exploitation of the current law's loopholes. While other legislative solutions also exist, Congress needs to correct the current problems to deal both humanely and efficiently with the UAC population. I applaud the Chairman and the 99 House cosponsors of SAF for attempting to tackle the UAC issue, which is a concern that President Trump has raised many times.

Asylum and Credible Fear

In cases where a person is apprehended at the border and claims a fear of returning to their country of origin, those individuals receive a credible fear screening. USCIS officers handle the credible fear screening, which most applicants easily pass. For those who found to have credible fear, these aliens withdraw from expedited removal proceedings and their cases enter the DOJ's immigration court, contributing to the increased backlog.

Massive backlogs in the adjudication of asylum claims have enabled illegal immigrants with unmeritorious claims to stay in the United States for far too long. Those who file frivolous claims abuse the lawful immigration system, and the lengthy delays in adjudication can create an opening for fraud and public safety or national security threats. Many aliens who have established a credible fear never even file an asylum application. Nearly half of the cases completed by DOJ in FY 2018 involving aliens from the Northern Triangle countries of El Salvador, Guatemala, and Honduras who had a positive credible fear failed to file an asylum application with the immigration judge or failed to appear at all. While asylum applicants await an interview and decision, they live in the United States, and many receive permission to work. The delays create a clear incentive for exploiting our asylum system for entry, and this incentive only becomes stronger as the backlog grows. True victims who deserve to have their legitimate asylum claims heard and approved in a timely fashion are lost in the backlog. Congress must step in and give DHS the tools and staff we need to protect legitimate asylum seekers and the American people.

DHS is doing what it can to address the asylum backlog. DHS is working with DOJ to ensure that detained cases along the southern border are adjudicated as expeditiously as possible. USCIS is also working to place asylum officers at detention centers to adjudicate screen aliens for credible fear claims and avoid the release of inadmissible aliens. USCIS has provided extensive asylum standards training to asylum officers, and is working with the Department of State to ensure that those officers have access to up-to-date country conditions for Mexico and the Northern Triangle, as nationals of these countries comprise the majority of those in expedited removal. USCIS's Fraud Detection and National Security Immigration Officers have been detailed to border detention facilities to enhance the integrity of the protection-screening interview and determination process. In early FY 2018, USCIS's Asylum Division established a periodic Credible Fear Quality Assurance Review Program to ensure integrity and consistency in the adjudication process.

President Trump and my Department have called for legislative reforms to address these problems. We must:

- Elevate the standard of proof for those claiming credible fear *and* modify the credible fear provision to ensure asylum officers conduct a credibility assessment to determine whether it is more probable than not, and that the statements made by the alien in support of the alien’s claims are true;
- Bar an alien from seeking additional immigration benefits where an alien has filed a frivolous, baseless, or fraudulent asylum application, and expand the use of expedited removal, as appropriate;
- Expand the ability to remove asylum seekers to safe third countries;
- Require aliens who seek asylum protection to enter the U.S. at ports of entry;
- Prevent aliens who have been granted asylum or who entered as refugees from obtaining lawful permanent resident status if they are convicted of serious criminal offenses, such as an aggravated felony;
- Require review of the asylee or refugee status of an alien who returns to their home country, absent a material change in circumstances or country conditions; and
- Close loopholes to bar terrorist aliens from entry and receiving any immigration benefits.

Criminal Aliens

We also need Congressional assistance to close loopholes that allow criminal aliens to circumvent the removal process. For the good of the American people, Congress should ensure that DHS has full authority to detain and remove criminal alien gang members, alien gang associates, and aliens who participate in gang-related activities.

We must clarify the definition of “conviction” in the *Immigration and Nationality Act* to address aliens who receive post-conviction relief or sentence modifications to avoid immigration consequences. In addition, Congress must address U.S. Courts of Appeals and U.S. Supreme Court decisions, including *Mathis v. United States*, 136 S. Ct. 2243 (2016), that have made it increasingly difficult for ICE to remove aliens convicted of very serious crimes. Further, Congress must address a series of Supreme Court decisions that have weakened the current removal grounds for aggravated felony convictions to ensure that those who commit a serious criminal offense cannot avoid removal and remain in the United States to commit additional crimes. We know from years of reporting by the Government Accountability Office that the rate of recidivism for criminal aliens who are not removed is seven arrests per criminal alien.

In particular, we must urgently close loopholes created by the U.S. Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This decision generally requires that DHS release a criminal alien ordered removed whom DHS/ICE has detained for 180 days after the period for removal began, unless DHS can show that it is extremely likely that removal can occur in the reasonably near future. The result of this Court decision is that we are forced to release dangerous individuals—including those responsible for terrible crimes—into the U.S. population. We must close loopholes created by the *Zadvydas* decision to give DHS the authority to keep dangerous criminal aliens who are subject to final orders of removal in detention as necessary to keep our communities safe.

Deferred Action for Childhood Arrivals (DACA)

Earlier this year, President Trump provided a reasonable solution that would have addressed major loopholes in our immigration laws, and provided generous relief to illegal immigrants who were brought to the United States as children. Presently, DACA is being litigated across the country, and current DACA beneficiaries are still allowed to apply for renewal. However, I am confident that ultimately the judicial branch will reach the same conclusion that DHS, DOJ, and the White House reached: DACA was an unlawful use of executive authority. I sincerely hope the House and Senate can work to provide relief for those that merit it while giving DHS the tools to address future surges in illegal immigration.

Immigration Benefits

Another key DHS mission is to manage our legal immigration system. President Trump understands that the system must work to the benefit of the American people, and DHS is moving to take all lawful action possible to protect American workers and industry.

Our legal immigration system is vast and it is generous. In FY 2016, there were 179 million nonimmigrant admissions into the United States. This included more than 2.4 million temporary foreign worker admissions in categories like H-1B, H-2A, H-2B and the NAFTA-created TN visa. In addition, there were more than 1.9 million foreign student admissions to the United States and over 60 million admissions for tourism/pleasure (not counting most Canadian or Mexican visitors). I encourage the public to recognize the number of foreign nationals welcomed legally into the United States every year to both understand the scale of work for DHS and its partner agencies, and to realize that there are millions entering the United States the correct way through legal channels.

Under this administration, inherent in all immigration policy decisions is how we can best protect the economic interests of the American people. Our immigration laws should, first and foremost, promote the national interest, which includes job creation, sustainment, and protection for U.S. workers, points recognized in the April 18, 2017 President's executive order entitled *Buy American, Hire American*. We want industry to have the workforce it needs, but that should not come at the expense of American workers. When a qualified and willing American worker is qualified for hire, he or she should be hired before looking abroad.

Our nonimmigrant temporary work categories are not meant to supplant, but rather supplement, the workforce in the United States. Over the past few years, we have seen high profile stories of American tech workers terminated from jobs after training their foreign worker replacements. That is unacceptable. Exploiting legal and illegal workers by paying them less or treating them unfairly will not be tolerated. To this end, DHS is conducting an ongoing review of all policies, guidance, and regulations governing the implementation of our legal immigration system to ensure that the American people we serve are protected. I will cover just a few of these issues below.

H-2B

The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary or seasonal nonagricultural jobs. The annual statutory cap on H-2B visas is 66,000. For the second year in a row, Congress granted DHS the authority to allocate visas above the cap in FY 2018. I echo former Secretary Kelly's sentiment that this is inappropriate. Instead of authorizing DHS to exceed the cap, Congress should enact changes it wishes to make by adjusting the statutory cap itself.

Congress is in the best position to know the “right” number of H-2B visas that American businesses should be allocated without harming American workers. Members of Congress are directly accountable to their constituencies, the realities of local labor markets, and their local employers, including the timing of those employers’ needs. Therefore, Congress, not DHS, should be responsible for determining whether the annual numerical limitations for H-2B workers set by Congress needs to be modified, and by how much, and for setting parameters to ensure that enough workers are available to meet employers’ temporary needs throughout the year.

Lastly, requiring all U.S. employers to use E-Verify to confirm the employment eligibility of their employees, existing employees as well as new hires, would greatly help reduce the magnet for illegal immigration and preserve jobs for legal workers.

H-2A

The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. Unlike the H-2B and H-1B programs, it is uncapped, and the number of visas issued has been increasing as of late, approaching 200,000. This is encouraging, to the extent that it reflects movement toward a legal workforce in the agriculture sector. However, much more needs to be done to discourage the use of illegal agricultural workers and encourage utilization of the H-2A program. The agriculture industry faces serious time sensitivities, and, as such, DHS moves expeditiously on H-2A petitions so that workers can arrive in a timely fashion. DHS is working with both Department of Labor and Department of State to share information faster to accelerate the decision making process. We will be working to identify other efficiencies that could increase H-2A program benefits to farmers and growers.

EB-5

Under this program, investors (and their spouses and unmarried children under age 21) are eligible to apply for a green card (permanent residence) if they make the necessary investment in a commercial enterprise in the United States, and plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers. Congress created the EB-5 Program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors, focusing on rural locations and areas experiencing high unemployment. In 1992, Congress created the Immigrant Investor Program, also known as the Regional Center Program. This sets aside EB-5 visas for participants who invest in commercial enterprises associated with regional centers approved by USCIS, based on proposals for promoting economic growth.

This program attracted much needed attention from both the House and Senate Judiciary Committees due to demonstrated concerns regarding fraud, abuse, and deviation from the intent of the Congress that created the program. DHS shares those concerns and encourages Congress to reach a long-term legislative solution to provide DHS more authority to bring integrity to EB-5 adjudications. Within the current statute, DHS is finalizing the EB-5 Modernization Final Rule for publication. We will publish a Notice of Proposed Rulemaking to reform the Regional Center Program by September 2019. While these regulatory changes are designed to enhance the integrity of the EB-5 Program, they of course cannot address those areas under Congress' control to reform. DHS is also reviewing other possible regulatory changes within our authority to improve EB-5 and looks forward to continuing coordination with Congress on this vital issue.

H-1B

The H-1B program allows companies in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge. Applicants must have a bachelor's degree or higher in the specific specialty, or its equivalent. H-1B specialty occupations may include fields such as science, engineering, and information technology.

Perhaps no other visa category has received as much attention in recent years as the H-1B, as reports of abuse of the program have caused outrage among the public. No qualified hard-working American should be forced to train their H-1B replacement, and then let go. The number of H-1B petitions routinely exceeds the statutory cap, and among that pool of petitions, we should endeavor to select the very best for the privilege of coming to the United States for work. DHS seeks to ensure that American workers are not pushed aside for the promise of cheaper, foreign labor, and that employers, recruiters, or any of their agents do not exploit foreign workers.

We stepped up our measures to detect employment-based visa fraud and abuse, but certain nonimmigrant visa programs need reform in order to protect American workers better. While current law only requires it for certain employers, which are few in number and can easily meet the wage and degree exemption, all employers should be required to certify that they have made a good faith effort to recruit U.S. workers before filing an H-1B petition, and have offered jobs to qualified and available American applicants. Although current law prohibits some H-1B employers from displacing U.S. workers, there are loopholes that must close. We have to make sure the H-1B program does not harm American workers who may be as qualified and willing to do jobs that foreign workers are imported to fill.

Per President Trump's *Buy American, Hire American* Executive Order, DHS is reviewing current guidance and regulation for opportunities to protect American workers while also providing good faith employers the opportunity to recruit H-1B workers where needed. This balance is consistent with the statute and President Trump's priorities. We also seek to work with Congress to make legislative changes that would provide more protections to the United States workforce.

Conclusion

Today I implore Congress to respond to the demands of the American people and take action once and for all to address gaps in our immigration system that are being taken advantage of every day. Truly, these gaps are costing American lives, they are putting our communities at risk, and they are undermining the very foundation of our national sovereignty. America is the most compassionate nation in the world and a beacon of hope for all who seek a better life. We can, and should, ensure that those aspiring to join our enduring republic can do so legally, safely, and humanely. And for that, we need your help.

Regardless of the operational and legal challenges we may face, it is our obligation to the American people to ensure our border is secure. We will not permit illegal entry into the United States by groups large or small. At the same time, we will act in accordance with the law, we will always treat intending migrants humanely and professionally, and we will continue to pursue ways for vulnerable populations to receive protection closer to home, rather than undertaking the dangerous journey to the United States.

I thank this Committee again for its leadership on these issues, and I look forward to your questions.